

AG Contract No KR00-1982TRN  
ADOT ECS File No JPA 00-124  
Project No CM-MES-0(19)  
TRACS No : SS476 01C  
Project:: Provide Traffic Equipment

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

THIS AGREEMENT is entered into 20 March, 2000, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; traffic signal equipment; and the application of pavement markings.
4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 24508  
Filed with the Secretary of State  
Date Filed: 03/20/01  
Robert Boyles  
Secretary of State  
Dick D. Haerwald

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).

7. The work embraced in this agreement and the estimated costs are as follows: Provide Traffic Equipment for Traffic Management Center.

Estimated Project Cost (incl. 15% CE costs)	\$563,500 00
Five Percent Surcharge	\$ 28,175.00
Subtotal	\$591,675 00
Federal Aid Funds @ 94.3% @\$530,223 00	\$500,000 00
City Funds @ 5.7%	\$ 30,223 00
Non Federal Aid Funds	\$ 61,452.00
Total City Funds	\$ 91,675.00*

\* - This includes a five percent surcharge per Local Government Engineer Memo of October 1996

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1 The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction the City will and does hereby designate the State, as authorized agent for the City. The State hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA, will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required. The City is and will be entirely responsible for all costs incurred by the State in performing and accomplishing the work as set forth in the agreement whether covered by the Federal funding or not.

3 The City shall acquire, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom, prior to the start of construction.

5 The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

6 Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance necessary for the purpose of regulating, warning and guiding traffic.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the State, the City and the FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

City of Mesa  
City Engineer  
P. O. Box 1466  
Mesa, AZ 85211-1466

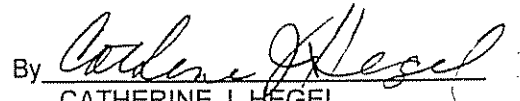
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

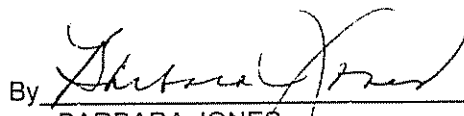
CITY OF MESA STATE OF ARIZONA

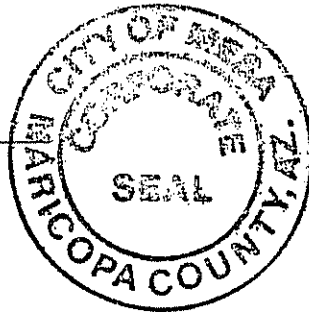
Department of Transportation

By   
MIKE HUTCHINSON  
City Manager

By   
CATHERINE J. HEGEL  
Contract Administrator

ATTEST:

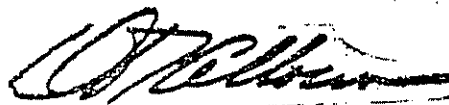
By   
BARBARA JONES  
City Clerk



RESOLUTION

BE IT RESOLVED on this 15th day of August 2000, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Mesa for the purpose of defining responsibilities for the acquisition of federal funds for the use and benefit of the City to provide Traffic Equipment for Center.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contractor Administrator for approval and execution.

A handwritten signature in black ink, appearing to read "D. Allocco", is written over a horizontal line.

DAVID R. ALLOCCO, P.E.  
Assistant State Engineer  
Engineering Technical Group

for MARY E. PETERS, Director

JPA 00-124

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 22<sup>nd</sup> day of February, 2000.

Neil Beets

City Attorney

RESOLUTION NO. 7619

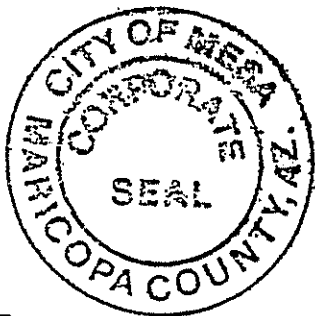
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA TO PROVIDE TRAFFIC EQUIPMENT FOR THE TRANSPORTATION MANAGEMENT CENTER.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa to provide traffic equipment for the proposed Transportation Management Center; is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 20th day of February, 2001.



APPROVED:

Keno Hawker  
Mayor

ATTEST:

[Signature]  
City Clerk



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX. AZ. 85007-2926

JANET NAPOLITANO  
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8855

Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025

FACSIMILE: (602) 542-4085

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR00-1982TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED March 8, 2001.

JANET NAPOLITANO  
Attorney General

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:ggt

Enc.

672390